Supreme 20-179

Judge Davis

Judge Clifford absent

Dunte 22, 1874.



# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 733.

THE UNITED STATES, APPELLANTS,

vs.

THOMAS FUGITT.

APPEAL FROM THE COURT OF CLAIMS.

**FILED APRIL 14, 1874.**

16th Stat. 250

= Repealing act

# SUPREME COURT OF THE UNITED STATES.

## No. 733.

THE UNITED STATES, APPELLANTS,

vs.

THOMAS FUGITT.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.


| | Original. | Print. |
|---|---|---|
| Petition | 1 | 1 |
| Traverse | 4 | 2 |
| Final judgment by the court | 5 | 3 |
| Application for allowance of appeal | 6 | 3 |
| Order allowing same | 7 | 3 |
| Findings of fact and conclusions of law | 8 | 3 |
| Opinion of the court | 10 | 4 |
| Opinion of Chief Justice Drake | 18 | 12 |
| Certificate | 19 | 12 |

1 In the United States Court of Claims.

THOMAS FUGITT
*vs.*
THE UNITED STATES. } 4185. Filed Jan'y 18, 1869.

To the honorable the Court of Claims of the United States:

The petition of Thomas Fugitt, of the city of Washington, District of Columbia, respectfully represents, that on the 30th day of June, A. D. 1866, and for a long time previous thereto, he was employed by the Government of the United States as a mechanic in the Bureau of Yards and Docks, of the Navy Department, at the Washington navy-yard, in the city of Washington, D. C., and that he continued in such employ until the 30th day of June, 1867, at the agreed sum and price of three dollars and twenty-five cents per day, and that he thereby became and was an employee in the office of the navy-yard in said city of Washington, D. C.

Your petitioner further represents that the Congress of the United States, at the second session of the Thirty-ninth Congress, passed a joint resolution giving additional compensation to certain employees in the civil service of the United States, which joint resolution was approved by the President of the United States on the 28th day of February, 1867, and is in the words and figures following, to wit:

2 "That there shall be allowed and paid out of any money in the Treasury not otherwise appropriated, to the following-described persons now employed in the civil service of the United States at Washington, as follows: To civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and employees, male and female, in the Executive Mansion, and in any of the following Departments, or any bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post-Office, Attorney-General's, Agricultural, and including civil officers and temporary and all other clerks and employees, male and female, in the office of the Coast Survey, Naval Observatory, Navy-Yard, Arsenal, Paymaster-General, including the division of referred claims, Commissary-General of Prisoners, Bureau of Refugees, Freedmen and Abandoned Lands, Quartermaster's, Capitol and Treasury extensions, city post-office, and Commissioner of Public Buildings; to the photographer of the Treasury Department, to the superintendent of meters, and to lamp-lighters under the Commissioner of Public Buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year from and after the 30th day of June, 1866. But when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said departments or offices within said year:

"*Provided*, That the above-named additional compensation to the employees of the Patent Office shall be paid out of the funds of said office:

"*Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

And your petitioner further represents that during the year commen-
3 cing June 30, 1866, and ending June 30, 1867, the gross amount

of compensation allowed and paid to him by the said Government was eight hundred and two dollars and seventy-five cents.

Your petitioner further represents that, believing himself entitled to said additional compensation, he made application to the proper officer of the Treasury Department, to wit, the First Comptroller thereof, for payment of the same, and that payment was refused.

Your petitioner further represents, that he has at all times borne true and faithful allegiance to the Government of the United States, and that he has not, in any manner, voluntarily aided, abetted, or given encouragement to rebellion against it.

Your petitioner therefore prays judgment against the United States for the sum of one hundred and sixty dollars and fifty-five cents, the amount of twenty per centum on said eight hundred and two dollars and seventy-five cents.

J. DANIELS,
*Attorney for Claimant.*

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

J. Daniels, being duly sworn, deposes and says that he is the attorney for the above-named claimant; that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that deponent verily believes the facts stated in said petition are true.

J. DANIELS.

Sworn to and subscribed before me this 8th day of January, 1869.
[L. S.] THOMAS J. MYERS,
*Notary Public.*

4 In the Court of Claims of the United States.—December term, A. D. 1873.

THOMAS FUGITT
*vs.*
THE UNITED STATES. } No. 4185. Filed Mar. 28, 1874.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of one hundred sixty dollars and fifty-five cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

JOHN GOFORTH,
*Assistant Attorney-General.*

5 In the Court of Claims.

THOMAS FUGITT
*vs.*
THE UNITED STATES. } 4185.

At a Court of Claims held at the Capitol, in the city of Washington, the 30th day *day* of March, A. D. 1874, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Thomas Fugitt have and recover of and from the United States the sum of one hundred and sixty dollars fifty-five cents, ($160.55.)

A true copy of record.

6 In the Court of Claims of the United States. December term, 1873.

THOMAS FUGITT
*vs.*
THE UNITED STATES. } No. 4185.

From the judgement rendered in the above-entitled cause, on March 30, 1874, in favor of claimant, the defendants, by their Attorney-General, on the 13 day of April, 1874, make application for and give notice of an appeal to the Supreme Court of the United States, the judgement in said cause being such as will affect a class of cases.

(Signed) JOHN GOFORTH,
*Ass't Attorney-General.*

Filed April 13, 1874.

It is hereby certified that the judgement in the above cause is one which will affect a class of cases.

C. D. DRAKE, *C. J.*

7 Ordered: That the appeal be allowed as prayed for.
By the Court.
April 13, 1874.

8 Court of Claims.

THOMAS FUGITT
*vs.*
THE UNITED STATES. } No. 4285. Filed March 30, 1874. J. R.

*Findings of fact and conclusion of law.*

This case having been heard before the Chief Justice and judges of the Court of Claims, at the city of Washington, on the 21st day of January, 1874, the court, after due deliberation, upon the proofs and evidence given at the trial, does hereby, at the time of rendering judgement, find the following facts:

During the fiscal year beginning July 1st, 1866, and ending June 30th, 1867, the claimant was employed as a machinist at the navy yard in the city of Washington, upon daily wages, by the Bureau of Yards and Docks, that being one of the eight Bureaus into which the Navy

9 Department is subdivided. He was employed and paid at the highest rates then paid by private parties for similar services, and was then in the employ of the Government on the 28th February, 1867. During the fiscal year he worked two hundred and forty-seven days, at $3.25 per day, amounting to $802.75, twenty per cent. of which is $160.55.

And upon the foregoing facts the Court of Claims, for the purpose of an appeal, decides as conclusion of law that the claimant was in the civil service of the United States within the meaning of the joint resolution 28th February, 1867, (14 Stat. L., p. 569,) and should recover twenty per cent. upon the compensation set forth in the foregoing finding.

By the court.

10 United States Court of Claims.

THE TWENTY PER CENT. CASES.—FILED MARCH 30, 1874.

---

GEORGE A. BELL
*v.*
THE UNITED STATES, (AND OTHER CASES.)

NOTT, J., delivered the opinion of the court:

When the cases arising under that statute which has been familiarly known as the twenty per cent. resolution, February 28, 1867, (14 Stat. L., p. 569,) first came before this court, it was held that they fell into two general classes. The first, it was thought, consisted of those persons who were "in the civil service of the United States, at Washington," and whose salary or pay was "directly fixed or indirectly limited by law." The second class, it was supposed, consisted of those persons whose services were such as might be rendered to any employer; whose wages came under the restrictions of no statute or departmental regulation, and who received for their services whatever such services might be worth in the place where they were rendered. There are indeed services not necessarily connected with the Government as a Government, such as those of the public gardeners, but Congress have attached to them the characteristic which distinguishes the civil service from ordinary employments, namely, a fixed and arbitrary rate of compensation. Such cases, we thought, fell within the first class, not because of the nature of the services rendered, but because Congress had placed them there by making them quasi public employments.

The first class of cases (including those just referred to) was carried to the Supreme Court by appeal, and the judgment of this court affirmed. The second class has never been taken to that tribunal. But it is said that the attention of the Supreme Court was called to them upon the argument of the first, and that the broad language used in the opinion of that court was intended to cover all cases that could possibly arise under the joint resolution. The Supreme Court does indeed say that persons are "properly in the civil service, if they were employed by the head of the Department, or of the Bureau, or any division of the Department charged with that duty, and authorized to make such contracts, and fix the compensation of persons employed, even though the particular employment may not be designated in any appropriation" act.

And the court adds that "many persons not employed as clerks and messengers of the Departments are in the public service by virtue of an employment by the head of the Department or by the head of a Bureau of the Department authorized by law to make such contracts, and such persons are as much in the service, within the meaning of the joint resolution, as the clerks and messengers employed in the rooms of the Department building." The twenty per cent. cases, (7 C. Cls. R., p. 290.)

11 Notwithstanding the scope of this language, and the assertion that the attention of the Supreme Court was called to the numerous classes of cases awaiting decision here, we remain of our former opinion, namely, that the cases fall into two classes: the former consisting of persons whose compensation was arbitrarily fixed or indirectly limited by Congress; the latter, of persons whose wages were unrestricted and determinable only by their highest market-value at the place where they were rendered.

As to the reasons upon which this distinction stands, it is sufficient to quote what this court formerly said in Baker's case, (4 C. Cls. R., p. 227:)

There have always been, and were when the joint resolution was passed, two classes of persons in the employment of the Government. The first consists of those whose services are special, and to be distinguished from ordinary employments. They make up the civil service of the United States, and their compensation is directly fixed, or indirectly limited, by law. The second class consists of those persons whose services are such as might be rendered to any employer; whose wages come under the restrictions of no statute, and who receive for their services whatever such services may be worth in the place where they happen to be rendered. For services which are connected with the Government, as a government, and which, being special, have no market-value, the salary, pay, or other compensation is necessarily fixed by law; but where the Government has become a builder or manufacturer, it has never attempted to regulate by law the fluctuating value of labor, which, as with other commodities, competition and the business of the country would control despite legal restriction, nor to overbid other employers in the labor-market, but has paid to its artisans and workmen the same prices for their industry which other employers might be paying for the same services in the same place. Generally this policy has been left to regulate itself between the demands of labor on the one hand, and the restraining duty of the officers charged with the hiring of workmen on the other. Occasionally it has been prescribed by law. Concerning persons in the civil service, we find in the statutes constant reference to the "pay authorized by law." In the act 23d April, 1854, (10 Stat. at L., 276,) to that of "messengers" and "watchmen" of the different Executive Departments of the Government in Washington, and to that of the "public gardener" and the "police at the Capitol;" in the act 18th August, 1856, (11 Stat. L., 145,) to that of "laborers in the employment of the Government, in the Executive Departments, and on the public grounds in the city of Washington," which, for example, the act fixes at "an annual salary of $600 each;" in the act of 14th March, 1864, (13 Stat. L., § 6,) to that of "females whom the heads of Departments are authorized to employ" "at an annual compensation not exceeding 600;" in the act 2 March, 1865, (13 Stat. L., 445, 450,) to that of "temporary clerks," with a special proviso that they "be classified according to the character of their services." But, with respect to persons not in the "civil service," we find no provisions of

law regulating their pay except such as direct that "the hours of labor and the rate of wages of the employés in the navy-yards shall conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity of the respective yards." Act 16th July, 1862, (12 Stat. L., 587.)

At the time when the joint resolution was passed the compensation of the great body of persons in the civil service at the seat of Government had been left for a long time unrevised, and had fallen into great disorder. By reason of the depreciation of gold and silver and the still greater
12 depreciation of paper money, wherewith these persons were paid, their compensation had become incommensurate with the increased expenses of the times, and particularly with the increased values set upon property and tenements in the city of Washington, and had fallen far behind the increase allowed by the Government to that other body of persons whose rate of compensation kept pace with that paid bp private employers. Thus, the very officer of the Treasury whose decision stopped the payment of these claims, and upon whose judgment depended in this matter alone more than half a million dollars, was at that time receiving exactly the same compensation received by one of these claimants, and the average of them all fell but 30 per cent. below his salary. The salary had not been increased since 1799, (act of 2d March, 1799, 1 Stat. L., 729,) and but once since the office of Comptroller of the Treasury was established in 1789, (act 2d September, 1789, 1 Stat. L., 65.) On the contrary, it had been diminished by being paid in depreciated paper money instead of gold and silver. The members of that Congress which fixed the Comptroller's salary at $3,500 a year, themselves received but about $1,200. The per diem allowance received by them in fact amounted, for the three laborious sessions of their two years' term of office, to $2,406. But the pay of that Congress which passed this 20 per cent. resolution had advanced to $5,000 a year exclusive of mileage. The expenses of life had also more than trebled between 1799 and 1867. Taking them at the standard, we may estimate that the Comptroller's salary in 1867 should have been $9,000 a year in gold; or, taking the congressional salary at the standard, we may conclude that if the Congress which increased the pay of Comptroller in 1789 had legislated in 1867, they would have advanced the salary to $12,000 a year in Treasury notes.

A third standard of comparison may be found in the wages paid to these claimants, for it is pretty certain that the artisans of that day would not have received (in gold) a fourth part of the Comptroller's salary; whereas these have received in the average 70 per cent. of his salary, and in one case an amount exactly equal.

In these intervening seventy years the daily toil of the artisan has diminished, but the labor and duties and responsibilities of the Comptroller's Office have been vastly augmented. They embrace the work of examining all accounts settled by the First and Fifth Auditors, and of certifying the balances arising thereon to the Register; of countersigning all warrants drawn by the Secretary of the Treasury which may be warranted by law; of reporting to the Secretary the official forms to be issued to the different officers for collecting the public revenue, and the manner of keeping and stating the accounts of the persons employed therein; of superintending the preservation of the public accounts subject to his revision, and providing for the payment of all moneys which may be collected; of superintending the recovery of all debts due to the United States, and directing legal proceedings to enforce their prompt payment, and of laying before Congress annually a list of such officers

as shall have failed to make the settlements required by law. (Act 3d March, 1817, 3 Stat. L., 367, §§ 8, 10, 13, 14.) The single requirement that all warrants drawn by the Secretary of the Treasury "which shall be warranted by law" be countersigned by the Comptroller, obliges that officer to pass, to a certain extent, upon the legality of every payment made by the United States; and in the fiscal year to which this twenty per centum applies there were 40,814 warrants drawn, requiring of the Comptroller 40,814 signatures, given with his own hand.

But these cases furnish a further illustration. They disclose
13 forty-five bank-note printers, in a Bureau of the Treasury, whose yearly wages amounted to $111,024. The largest received by any one man was $3,500; the smallest $2,039; three of the forty five were above $3,000; fifteen above $2,500; all but nine above $2,200. In the same Bureau the employés of the civil service who were watchmen or laborers received but $600; those who were messengers, but $840; those who were clerks but $1,200, $1,400, $1,600, $1,800. The superintendent of printing, under whom these men worked, received but $2,000; the chief of the Currency Division, by whom they were employed, but $3,000. The deputy comptroller of the currency, an official whose responsibilities are of so grave a nature that he is required by statute to give security to the amount of $50,000, received less than the wages paid to one-third of the workmen; and, finally, chiefs of divisions in the Auditor's and Comptrollers' Offices, who pass in a single year upon accounts literally embracing millions of dollars, received less than the least of these claimants.

The salaries and pay which Congress undertook to increase by law were the salaries and pay which were regulated by law. Cases, indeed, are spoken of "where no salary is fixed by law," but those were the cases of temporary clerks, persons in the civil service, and whose salaries, though not directly "fixed," were nevertheless indirectly limited by law. Persons also are enumerated in certain military and naval offices, but they were persons who, acting under military and naval authority, still were, as we held in Clark's case, (1 C. Cls. R., p. 145,) "persons engaged in the civil service." The joint resolution was not a wild gratuity, a naked, needless gift of the hard-paid taxes of the nation, but was founded on an intent to do justice to those persons in the civil service who had not been compensated justly for their services. The joint resolution was therefore a remedial statute to be construed by the well-known tests, "the old law, the mischief, and the remedy." The "old law" here was the various statutes establishing, regulating, and limiting the compensation of persons in the civil service. Where there was no old law, and employés received for their services what they were worth among men, the new law did not apply; they who had no wrongs to be righted needed not the remedy which it provided. The "mischief" was the unjust compensation which, by the changed circumstances of the nation, had come to be paid to persons in the civil service, occasioning irritation, discontent, and a sense of wrong in the minds of men, and leading to bribery, extortion, and other evil practices. The "remedy" intended by the joint resolution lies not in flinging the money of a people struggling with a great debt to those who received for their services their highest market-value, merely because such services chanced to be rendered at the seat of Government, where persons in the civil service chiefly are employed, but in faithfully extending the statute to all those actually in the "civil service of the United States," whose compensation was restricted by law, and who, being circumscribed in their means of subsistence by the arbitrary operation of law, could look only to the law for the bettering

of their condition. And therefore it is that the joint resolution, though loosely and recklessly drawn, is still careful to say that the "20 per centum" to be allowed and paid shall be to "persons now employed in the civil service of the United States."

The phrase limits and controls all that follows. The "clerks, messengers, watchmen, and employés" mentioned are not all the persons employed by the Government at Washington, but only the persons employed "in the civil service" of the United States, and whose service was rendered within the functions of the offices named. These claim-
14 ants were not persons in the civil service; they were simply hired by the job, or the day, to do common mechanical labor, and paid for their work all it was worth in the market. Instead of being public servants, they were merely public contractors. The Government owes them no gratuities more than it owes all other contractors, and it has paid to the least of them more than double the average which it pays to persons in the civil service at Washington. "It is the business of the judges so to construe the act as to suppress the mischief and advance the remedy;" and we shall most assuredly do so if we extend it to all who are both within the letter and the spirit of the joint resolution, and to none beside.

The cases now before the court present several distinct questions additional to the general question before considered, and fall into the following classes:

I.—*Plate-printers in the Bureau of Engraving and Printing, in the Treasury Department.*

These men were employed as printers and paid at an agreed rate for the amount of work done. They were allowed to employ assistants, who were paid from their earnings, though paid directly by the disbursing officers of the Department, the sums thus paid being deducted from the gross earnings of the claimants. The evidence before us does not show the amount of the gross earnings, but only of the balance or net earnings after the assistants had been paid. If these men are entitled to recover the twenty per cent., it seems clear to us that it must be estimated and can only be estimated upon the gross earnings paid to them by the Government. The Government was a stranger to their assistants in a legal sense, and was concerned only in the gross amount paid to them. It is not pretended that the assistants could in their turn come in and claim twenty per cent. upon the amount allowed them by their employers, the plate-printers. And it is to be noted that the net earnings in some cases exceed $3,000 per annum, and *non constat*, but that the gross earnings may have exceeded $3,500 per annum.

The joint resolution is limited by the terms of its second proviso to persons "whose salaries as fixed by law" do not "exceed $3,500 per annum." Did Congress ever contemplate giving twenty per cent. upon the earnings of one man whose compensation exceeded $3,500 per annum, and withholding it from another whose salary was fixed by law above that amount? We think not. The proviso indicates that the pay to be increased was pay "fixed by law;" and our conclusion is, that though these men were employés in one sense within an Executive Department, yet they were not persons "in the civil service of the United States" within the meaning of the joint resolution, but contractors whose contract work from prudential reasons was brought within the immediate supervision of an Executive Department.

II.—*Laborers on the Treasury Extension.*

The evidence of the Supervising Architect in this class of cases very clearly illustrates the actual existence of the legal classification which this court, as before stated, originally made. He says: "The labor performed by them was not rendered as duties of civil employés for whose services as such any appropriation for the civil service of the Government at Washington provided compensation. Specific appropriations were made for the construction of the north wing of the Treasury building. Under such appropriations contracts are entered into for finished work, comprehending both materials and labor; materials separately, and labor by the day separately. The services of the parties in question were rendered under the latter contract. The consideration agreed upon for their labor was the highest market-wages. The payments upon each of these contracts were made from the specific appropriations above mentioned." We think that persons whose services were rendered under contracts for "finished work," at the "highest market-wages," cannot be considered as employés in the civil service.

III.—*Laborers in the Commissary Department.*

It is noticeable that while the Quartermaster's Department is enumerated in the joint resolution, and also the Commissary-General of Prisoners, yet that the Commissary Department is unnamed. These cases present the question whether the Commissary Department is a part of the Army or a Bureau of the War Department. The earlier and the later statutes generally treat the Commissary-General as simply a military officer, though there is one statute which indicates that the office is a "military bureau" of the War Department. Act 4th July, 1836, (5 Stat. L., p. 117, § 5.) The joint resolution extends to "the following-named Departments or any Bureau or division thereof," and among these Departments is the War Department. If it was intended to include under the term "Bureau" or "division" the Commissary Department, it was needless to specifically name the Quartermaster's Department. On the contrary, it is not easy to understand why it should have embraced the other military bureaus, such as the Paymaster-General, the Commissary-General of Prisoners, the Bureau of Refugees, the Quartermaster's, and have omitted the Commissary Department. If the usual rule of construction be applied, the naming of some of these military bureaus in the joint resolution must be deemed to exclude those not named. But it is at the same time a moral certainty that Congress never intended to exclude one military bureau while it benefited all the rest. The history of this piece of legislation shows that it was made up of numerous amendments, hastily thrown together, and our conclusion is that it was intended to apply to the Commissary Department.

IV.—*Laborers in the Medical Department of the Army.*

The same question and the same embarrassment of construction arise with regard to this class of claimants that have been pointed out in the preceding class. The Surgeon-General, in an official report on this subject, says: "The Medical Department is not made a bureau of the War Department by any law known to me. By the term 'Medical Department,' or, more correctly 'Medical Department of the Army,' is under-

stood not a bureau or office, but the entire organization of means and appliances for conserving the health of the Army and taking care of the sick and the wounded." He adds: "The Surgeon-General's office is recognized in the annual appropriations made by Congress as a part of the War Department, but the claimant was not in the Surgeon-General's office. We think that this latter fact distinguishes these cases from the preceding, and that the parties were civil employés of the Army, and not in any sense in the civil service.

16 V.—*Laborers employed by the Quartermaster's Department at Washington, but whose services were rendered at Arlington, etc.*

However inconsistent it may seem for Congress to have allowed an increase of compensation to one man employed by the Quartermaster's Department, on this side of the Potomac, and to have withheld it from another, employed by the same officer, but sent to the other side of the river, it is clear that the joint resolution is limited by its terms to "persons now employed in the civil service of the United States at Washington." A person employed at Arlington is certainly not employed at Washington, although, as is claimed here, the hiring and the paying were both done in Washington. The fact that the contract of service had its inception here, and that final performance under it, that is to say, payment, was also made here, does not place the employment here; and we cannot, by any liberality of construction, extend the joint resolution to a person whose employment was elsewhere.

VI.—*Employés of the Secret Service Division of the Treasury Department.*

In this class the persons employed were under the direction of the Solicitor of the Treasury, and the duty performed appertained to the Treasury Department. It consisted chiefly in the detection of counterfeiters, and the parties "were stationed at no particular place except as their duties required." As we have previously held, in the case of Marche, (5 C. Cls. R., p. 525,) it was not the accidental presence of the claimant in the city of Washington which entitled him to the benefits of the joint resolution, but it was necessary that the functions of his office lie within the Treasury at the seat of Government. We do not understand that these detectives were necessarily employed here, nor, as a matter of fact, that they actually remained here. Their services were of a migratory character, and probably the smallest part of their employment was that which was rendered in Washington. Still, while liable to be sent elsewhere, they were stationed here. This was their only permanent place of official abode. Their salaries were fixed by law; they were in the civil service as assistants of the Solicitor of the Treasury; and they were in the civil service in a greater or less degree at Washington. Our conclusion is that they are entitled to recover.

VII.—*Cases where the statute of limitations is pleaded.*

A large number of the cases now before the court, including some in the preceding classes, were not brought until the 30th of June, 1873. The defendants set up the statute of limitations as to the eleven-twelfths of each demand. It is conceded that the suit was brought in time, so far as the last month's pay is involved, but it is insisted that the suit is barred as to all pay accruing before the first day of June, 1867. If the joint resolution, contrary to our construction of it, extends to all employés of the

Government, as well as to those in the civil service proper, it is evident that this theory of monthly payments cannot be universally applied. Some of the men were employed by the day, and some by the piece, and the question must arise whether a cause of action accrued to them strictly, as each day's work was done, or each piece of work finished, or whether there was a running account extending to the date of the last item. But with regard to those persons actually in the civil service, and entitled beyond question to the benefits of the joint resolution, it is undeniable that their salaries were generally paid monthly. But on
17 looking into the statutes we do not find that there is any provision of law to that effect. The salaries are almost invariably spoken of as "annual salaries." Occasionally there is some provision, as in the case of the judiciary, that they be paid quarterly; but ordinarily the time of payment is not fixed by law. Further than this, the joint resolution does not designate a time of payment. "There shall be allowed and paid," it says, "an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year." And it further provides that where a person "shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be paid on the amount such person is so entitled to receive for services within said year." It is, therefore, by no means clear that any portion of the twenty per centum was payable until the expiration of the fiscal year, and we are inclined to say, for these reasons, that a party's claim did not accrue until the fiscal year had ended.

Our conclusion, consequently, is that in five of the preceding classes of cases the Government is entitled to judgment. But the language of the Supreme Court before quoted is broad enough to warrant an inferior tribunal to come to a directly opposite conclusion. We are, however, inclined to believe that the Supreme Court could not have intended that its opinion should be applied to cases so inherently different from those before it as we consider the most of the present cases to be. Nevertheless, we are not unmindful of the fact that our conclusion is not free from doubt, and that the claimants, by reason of the smallness of their respective demands, have not the right of appeal to the Supreme Court. We therefore direct a judgment to be entered pro forma against the Government in one of each class of cases, so that the correctness of our conclusions may be reviewed by the Supreme Court. The residue of the cases which have been submitted will remain under advisement until the decision of the Supreme Court in those appealed.

Judgment will be entered for the claimants under this opinion in the following cases:

| | |
|---|---|
| George A. Bell *v.* The United States for | $236 86 |
| Patrick Welsh *v.* The United States for | 108 85 |
| John Wild *v.* The United States for | 124 80 |
| James Hannan *v.* The United States for | 84 00 |
| O. A. Hoffman *v.* The United States for | 143 60 |
| Thomas Dorkin *v.* The United States for | 137 62 |
| Maurice Tucker *v.* The United States for | 360 00 |
| John Smith *v.* The United States for | 71 00 |
| John Donnelly *v.* The United States for | 65 80 |
| J. D. Townley *v.* The United States for | 125 65 |
| John Cullen *v.* The United States for | 206 96 |
| Thomas Fugitt *v.* The United States for | 160 55 |
| Cha's Wood *v.* The United States for | 67 68 |
| Timothy Craven *v.* The United States for | 69 41 |

DRAKE, CH. J.:

I do not wish to be considered as taking part in the decision just read.

It is my opinion that the repeal of the joint resolution of February 28, 1867, left this court without jurisdiction of any action for the recovery of anything thereunder.

Filed March 30, 1874.

In the Court of Claims.

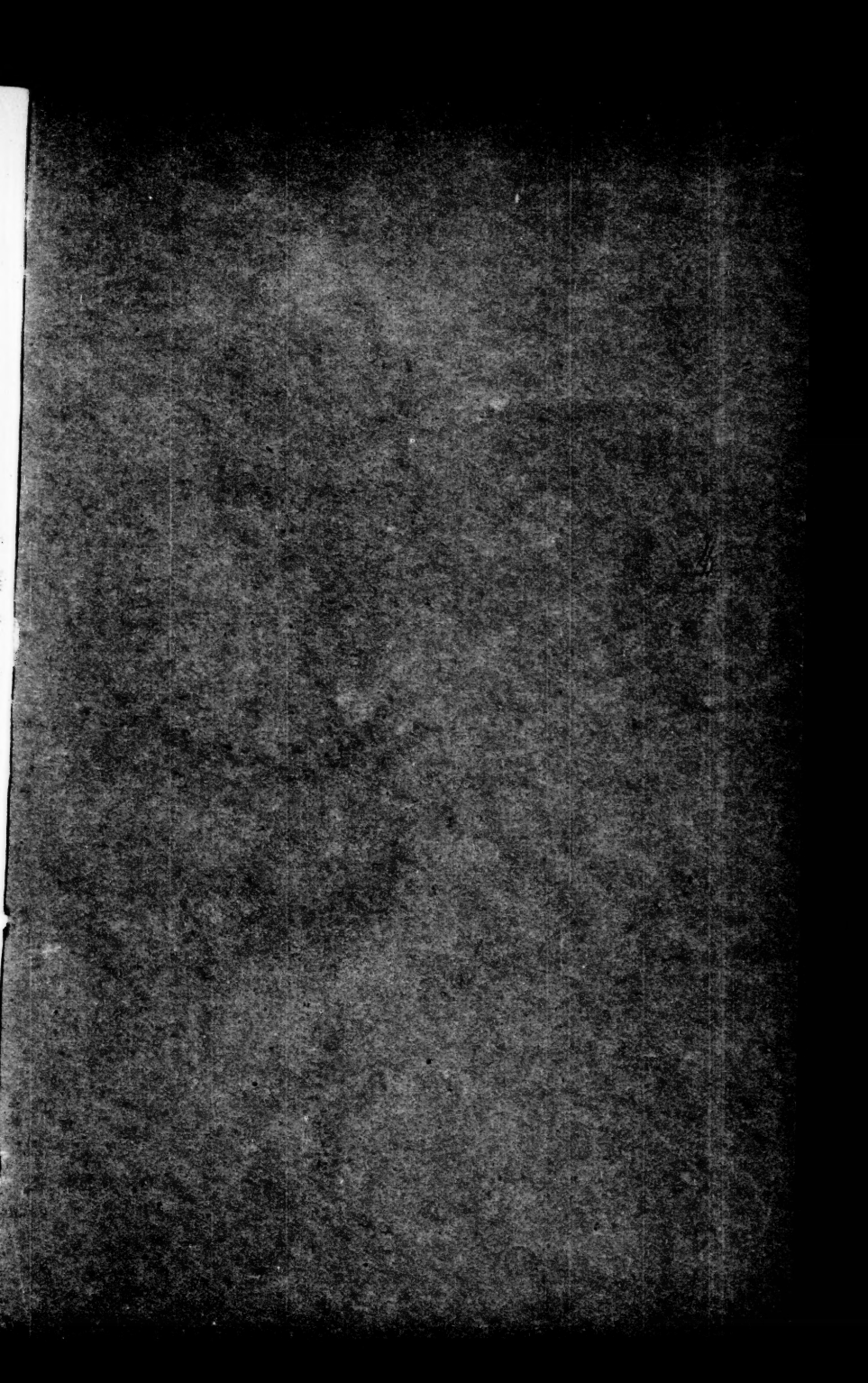
THOMAS FUGITT
*vs.*
THE UNITED STATES. } No. 4185.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office April 13, 1874, and of the order of the court, of April 13, 1874, allowing the same; of the findings of fact by the court, and the conclusion of law thereon, on which the court founded its judgment; of the opinion of the court and the opinion of the chief justice of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 14th day of April, 1874.

[SEAL.] JOHN RANDOLPH,
*Assistant Clerk Court of Claims.*

(Indorsement on cover:) No. 733. The United States, appellants, *vs.* Thomas Fugitt. Court of Claims. Filed 14th April, 1874.



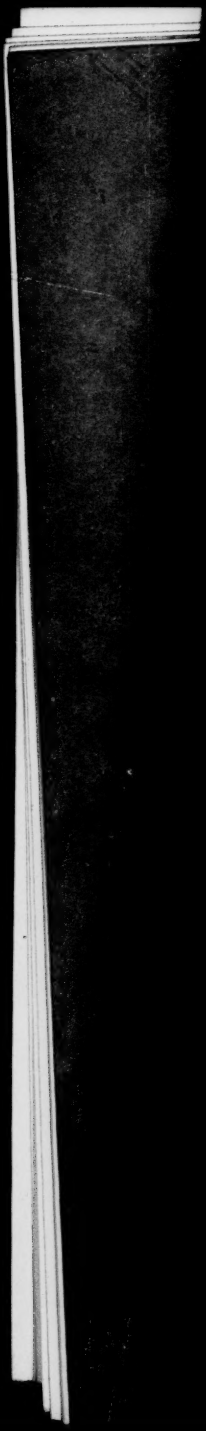
# In the Supreme Court of the United States.

OCTOBER TERM, 1873.

| | |
|---|---|
| THE UNITED STATES, *Appellants*, *vs.* THOMAS FUGITT. | No. 733. |
| THE SAME, *vs.* J. D. TOWNLEY. | No. 734. |
| THE SAME, *vs.* JOHN CULLEN. | No. 735. |
| THE SAME, *vs.* CHARLES WOOD. | No. 736. |
| THE SAME, *vs.* TIMOTHY CRAVEN. | No. 737. |
| THE SAME, *vs.* JOHN WILD. | No. 738. |
| THE SAME, *vs.* JOHN DONNELLY. | No. 739. |
| THE SAME, *vs.* O. H. O. HOFFMAN. | No. 740. |
| THE SAME, *vs.* PATRICK WELSH. | No. 741. |
| THE SAME, *vs.* JAMES HANNAN. | No. 742. |
| THE SAME, *vs.* THOMAS DORKIN. | No. 743. |
| THE SAME, *vs.* JOHN SMITH. | No. 744. |
| THE SAME, *vs.* MAURICE TUCKER. | No. 745. |
| THE SAME, *vs.* GEO. A. BELL. | No. 746. |

*Appeals from the Court of Claims.*

BRIEF FOR APPELLANTS.



# In the Supreme Court of the United States

OCTOBER TERM, 1873.

---

BRIEF FOR THE UNITED STATES.

---

THE UNITED STATES, *Appellants*,
*vs.*
THOMAS FUGITT. } No. 733.

The above, and the cases following, to No. 746, inclusive, come up as class cases from the Court of Claims, and are known as twenty per cent. cases, and represent several hundred similar suits already brought in that court under the resolution of 28th February, 1867, (14 Stat. at Large, 569, *sic:*)

"That there shall be allowed and paid, out of any money in the Treasury not otherwise appropriated, to the following-described persons, now employed in the civil service of the United States at Washington, as follows: To civil officers, temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them, and employés, male and female, in the Executive mansion, and in any of the following-named departments, or any bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General, Agricultural, and including civil officers, and temporary and all other clerks and employés, male and female, in the offices of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims, commissary general of prisoners, bureau

of refugees, freedmen, and abandoned lands, quartermasters, Capitol and Treasury extension, city post office, and commissioner of public buildings, to the photographer and assistant photographer of the Treasury Department, to the superintendent of meters, and to lamplighters under the commissioner of public buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year from and after the thirtieth day of June, eighteen hundred and sixty-six; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said departments or offices within said year: *Provided*, That the above-named additional compensation to the employés of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

This resolution was repealed July 12, 1870, (16 Stat. at Large, p. 250, sec. 4.)

The conclusions of law of the Court of Claims in some of these cases were against the right of claimants to recover, but, as the smallness of their respective demands would have prevented appeal by the claimants, judgments *pro forma* were entered for the purpose of review in this court. In others, judgments were entered for claimants upon the finding of facts and conclusions of law.

These cases differ from the twenty per cent. cases in 13 Wallace, 568, in this: In those cases the salary or pay was fixed directly or limited indirectly by law, and was a fixed and arbitrary rate of compensation, and

the employé had no part in naming the amount to be paid him. In the cases now here, the compensation was not fixed or limited by any law or by the head of any department or division, but was the highest ruling rate in the market for similar labor, and was fixed by the employé himself, and changed by him as the market changed—the wages were under the restriction of no statute, and the services were such as might be rendered to any employer.

This court, in those cases said—(13 Wallace, 573:)

"Certain described persons and classes of persons are plainly entitled to the benefit of the provision, whether regarded as officers or as mere employés, and it is no valid argument against that proposition to show that there are or may be other employés or persons in the civil service here who are not within that description, as the terms of the enactment are special and do not extend to every employment in that service, but only to the described persons and classes of persons therein mentioned."

The claimants in the present cases, from the finding of the Court of Claims, belong to classes entirely different from those already decided. Some are brought within the running of the statute of limitations; some are connected with the military, and not with the civil service; some are contractors for finished work; and some performed their work outside the limits of the city; and all are before the court for the first time.

The chief justice of the Court of Claims refused to take part in the decision of these cases, because, in his opinion, the repeal of the joint resolution of February 28, 1867, left the Court of Claims without jurisdiction of any action for the recovery of anything thereunder.

## STATEMENT.

The petition of claimant, and the finding of facts by the Court of Claims, show that Thomas Fugitt was employed as a machinist in the navy yard at Washington, D. C., upon daily wages "at the agreed sum and price of three dollars and twenty-five cents per day," and that he was employed and paid at the highest rates then paid by private parties for similar services; that his employment was by the Bureau of Yards and Docks, one of the eight bureaus into which the Navy Department is subdivided.

## ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding as a matter of law that he was in the civil service of the United States within the meaning of the joint resolution of 28th February, 1867, and should recover twenty per cent. upon his compensation.

## ARGUMENT.

### I.

That it was not the intention of Congress to give this additional pay to Thomas Fugitt, or the class which he represents, is evident from the *language* of the resolution. The departments, divisions, and bureaus in which the beneficiaries of the resolution are to be found, are enumerated at length, but the *descriptio personarum* is "the following-described persons now employed in the *civil service* of the United States."

The words civil service in 1867, as now, had a distinctive meaning, designating a class of persons in the employ of the Government who were not in the military service, and who were appointed, not hired, by the President or heads of department, whose existence was recognized by Congress, and whose compensation was fixed directly by law or indirectly by appropriation acts, &c.

Outside of the military service have always been a large force of laborers, teamsters, and contractors, hired or employed for particular work and paid either by the job or day. These constitute no part of the army, and neither in war nor peace are they entitled to the immunities or privileges of the military service. So outside of the civil service are a large number of laborers, mechanics, and craftsmen performing work which is not peculiar to a government, and whose compensation is a matter of contract between the employer and the employé.

It has never been supposed that Congress meant to include these men in the civil service in the various acts which have been passed to reform that service.

Section 9 of act March 3, 1871, (16 St. L., p. 514,) authorizes the President to prescribe rules for the admission of persons into the civil service, and to establish regulations for the conduct of persons who may receive appointments into the civil service. Section 3 of act of 20th April, 1871, (p. 7, 17 St. L.,) made an appropriation for carrying out the provisions of the preceding act. Section 1 of the act of 8th May, 1872, (p. 82, 17 St. L.,) made an appropriation to enable the President to perfect and put in force rules regulating

## STATEMENT.

The petition of claimant, and the finding of facts by the Court of Claims, show that Thomas Fugitt was employed as a machinist in the navy yard at Washington, D. C., upon daily wages "at the agreed sum and price of three dollars and twenty-five cents per day," and that he was employed and paid at the highest rates then paid by private parties for similar services; that his employment was by the Bureau of Yards and Docks, one of the eight bureaus into which the Navy Department is subdivided.

## ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding as a matter of law that he was in the civil service of the United States within the meaning of the joint resolution of 28th February, 1867, and should recover twenty per cent. upon his compensation.

## ARGUMENT.

### I.

That it was not the intention of Congress to give this additional pay to Thomas Fugitt, or the class which he represents, is evident from the *language* of the resolution. The departments, divisions, and bureaus in which the beneficiaries of the resolution are to be found, are enumerated at length, but the *descriptio personarum* is "the following-described persons now employed in the *civil service* of the United States."

The words civil service in 1867, as now, had a distinctive meaning, designating a class of persons in the employ of the Government who were not in the military service, and who were appointed, not hired, by the President or heads of department, whose existence was recognized by Congress, and whose compensation was fixed directly by law or indirectly by appropriation acts, &c.

Outside of the military service have always been a large force of laborers, teamsters, and contractors, hired or employed for particular work and paid either by the job or day. These constitute no part of the army, and neither in war nor peace are they entitled to the immunities or privileges of the military service. So outside of the civil service are a large number of laborers, mechanics, and craftsmen performing work which is not peculiar to a government, and whose compensation is a matter of contract between the employer and the employé.

It has never been supposed that Congress meant to include these men in the civil service in the various acts which have been passed to reform that service.

Section 9 of act March 3, 1871, (16 St. L., p. 514,) authorizes the President to prescribe rules for the admission of persons into the civil service, and to establish regulations for the conduct of persons who may receive appointments into the civil service. Section 3 of act of 20th April, 1871, (p. 7, 17 St. L.,) made an appropriation for carrying out the provisions of the preceding act. Section 1 of the act of 8th May, 1872, (p. 82, 17 St. L.,) made an appropriation to enable the President to perfect and put in force rules regulating

the civil service, and the act of 3d March, 1873, (p. 530, 17 St. L.,) reappropriated any balance to enable the President to perfect and put in force such rules regulating the civil service.

The Official Register, published biennially, by authority of Congress, since the year 1816, "containing correct lists of all the officers and agents, civil, military, and naval, in the service of the United States," is further proof of the meaning given to the words "service of the United States," by the executive and legislative branches of the Government. No mechanics or laborers connected with either the civil, naval, or military services appear therein, except those whose salaries have been fixed by law, and whose connection with the Government has resulted from appointment, not hiring nor contract. No law has ever been passed requiring the names of those so hired or contracted with to be placed in the Register, nor has Congress ever recognized their existence, except by making appropriations for certain work, and authorizing certain officers to *contract* for the materials and labor necessary for the same. Being thus officially unknown to Congress, they ought not to be considered in the mind of Congress at the time of the passage of an act unless specially mentioned therein.

The opinion of Attorney General Black (Opinions, vol. 9, p. 117) draws a plain distinction between those who are constantly and regularly engaged at plain manual labor under the authority of laws which expressly authorize their employment, and those who are merely carrying out the provisions of an appropriation act.

In the case of Kitchen *vs.* Shaw, 6 Adolp. & Ellis, p. 734, the court in construing a statute thus worded, "And whereas it frequently happens that artificers, calico printers, * * * laborers, and others, who contract, &c., for remedy whereof, be it enacted, that if any artificer, calico printer, * * * laborer, or other person shall contract," &c., said, "Large as these words undoubtedly are, when we apply to them the ordinary rules for construing acts of Parliament, we find ourselves compelled to say that the *other persons* are not all persons whatever who enter into engagements to serve for stated periods, but persons of the same description as those before enumerated; and that the generality of the words must have been so restricted."

See Sandiman *vs.* Breach, 7 B. & C., p. 96.

II.

"The most universal and effectual way of discovering the true meaning of a law when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislator to enact it. For when the reason ceases the law itself ought likewise to cease with it." To ascertain the cause of this resolution which is remedial there are three points for consideration—the *old law*, the *mischief*, and the *remedy*.

The *old law* consisted of the statutes which had been passed from time to time fixing the compensation of the various persons belonging to the civil service of the United States.

The *mischief* was that the compensation thus fixed had remained unchanged, while the price of necessaries and the cost of living had advanced greatly. The inflation of the currency, the consumption of products during the war, the price of gold, and the demand for labor, combined to cause a great rise in the price of all commodities, so that, in 1866 and 1867, the cost of living stood toward the salaries which had been fixed by law in a very different ratio from what it did when those salaries were fixed.

The *remedy* applied by Congress to this mischief was the restoration of that old ratio by the additional allowance of twenty per cent. It being the duty of the court so to construe the statute as to suppress the mischief, and not to extend the remedy beyond cases within the mischief, it is necessary to ascertain whether this claimant was suffering from the mischief which Congress sought to remedy.

Thomas Fugitt was employed at daily wages. He was employed and paid at the highest rates then paid by private parties for similar services, and this price was affected neither directly or indirectly by law or the head of any department, division, or bureau, but was fixed by Thomas Fugitt himself.

The market rates for labor, skilled and unskilled, had kept pace with the market rates for all productions, so that there had been no change of ratio between them, and consequently the claimant had suffered no mischief which needed remedy; but if such mischief had existed, the remedy was in his own hands. He had no need of the intervention of Congress. He could have fixed a new price upon his labor, and if the

Government wished to retain his services, could have paid him that price.—(See cases of Cullen, 735, and Craven, 737.)

Both the language and the reason of the resolution exclude this claimant from its benefits.

When Congress did intend to benefit this class of laborers they used very different language:

"That eight hours shall constitute a day's work for all laborers, workmen, and mechanics now employed or who may be hereafter employed, by or on behalf of the Government of the United States; and that all acts and parts of acts inconsistent with this act be, and the same are hereby, repealed." (15 St. L., 77.)

III.

The resolution of February 28, 1867, was repealed by act of July 12, 1870, (16 St. L., 254, sec. 4.)

This act of repeal prevented the officers of the Treasury from paying the additional twenty per cent. after the date of its passage.

If the passage of the resolution created an implied contract on the part of the Government to pay this twenty per cent., and gave jurisdiction to the Court of Claims, the act of repeal divested that jurisdiction. As to the eight months of the fiscal year which had expired at the passage of the joint resolution, no contract could arise, for there was no consideration, and the promise to pay the additional allowance was *nudum pactum*.

It was a bounty. "A pensioner, by being placed on a pension roll, acquires no vested rights by being placed there which may not be divested by some subsequent act." (Dale *vs.* The Governor, 3 Stew. Ala., 387.)

As to the remaining four months of the fiscal year, perhaps the allowance becomes a part of the consideration for the work of those included within its terms.

The right to sue the sovereign was *ex gratia*, and the repeal of the law was a withdrawal of the grace which had been tendered to the claimant. Klein's case, 13 Wallace, 128, is not analagous.

A law repealed is obliterated, and must be considered as a law that never existed, except for the purpose of those actions or suits which were commenced, prosecuted, and concluded while it was an existing law.

Key *vs.* Goodwin, 4 Moore & Payne, 341.
1 Hill, 324, Butler *vs.* Palmer.
Dwarris on Statutes, (Potter's edition,) 153.
Miller's case, 3 Burrows, 1456.
Surtees *vs.* Ellison, 9 B. & C., 750.

---

THE UNITED STATES, *Appellants*, *vs.* J. D. TOWNLEY. } No. 734.

J. D. Townley was employed as coppersmith on the Treasury extension, upon daily wages. He was employed and paid at the highest market price then paid by private parties for similar services. Under specific appropriations for the construction of the Treasury extension, contracts were entered into for finished work, comprehending both materials and labor—materials separately, and labor by the day separately. The services claimed were rendered under the latter contracts. The consideration agreed upon was the highest market wages, and claimant was paid from the specific appropriations above referred to.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding as a matter of law, that he was in the civil service of the United States within the meaning of the joint resolution of February 28, 1867, and should recover twenty per cent. upon his compensation.

ARGUMENT.

Although he appears on the pay rolls of the Treasury Department, he does not appear in the "Official Register," among the employés in the supervising architect's office, nor are the names of any of those laborers or contractors engaged in the construction of the Treasury extension to be found there. The right of this claimant to recover depends on his being in the civil service of the United States employed in the office of the Capitol and Treasury extension. It is difficult to see any reason for adding twenty per cent. to this contract of labor that would not have applied with equal force to the contracts for materials, which were entered into at the same time. He comes neither within the terms nor the spirit of the resolution, for the reasons given in the Fugitt case, and the judgment of the Court of Claims should be reversed.

---

THE UNITED STATES, *Appellants*,
*vs.*
JOHN CULLEN. } No. 735.

John Cullen was a watchman upon the Capitol extension, at daily wages, and was employed and paid at

the highest market price then paid by private parties for similar services. His compensation changed during the year, showing conclusively that he was not dependent upon the will of Congress for its amount.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding, as a matter of law, that he was in the civil service of the United States within the meaning of the joint resolution of 28th February, 1867, and should recover twenty per cent. upon his compensation.

The only distinguishing feature between this case and Townley's, *supra*, is, that this work was upon the Capital extension, while his was on the Treasury. For the reasons given in the case of Fugitt, No. 733, and in the case of Townley, No. 734, the judgment of the Court of Claims should be reversed.

---

THE UNITED STATES, *Appellants*,
*vs.*
CHARLES WOOD. } No. 736.

Charles Wood was employed as a laborer upon monthly wages in the Quartermaster's department in the city of Washington. He was employed and paid at the highest market price then paid by private individuals for similar services.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding, as a matter of law, that he was in the civil service of the United States within the meaning of the joint resolution of 28th February, 1867, and should recover 20 per cent. upon his compensation.

ARGUMENT.

For the reasons set forth in the case of Fugitt, *supra*, the appellants contend that, only those laborers and emyloyés in the office of quartermasters, are within the meaning of the resolution who were employed in the civil service of the Government by the War Department, and who are to be found in the "Official Register" of that Department for 1867, on pp. 176, 180.

---

UNITED STATES, *Appellants*,
*vs.*
TIMOTHY CRAVEN. } No. 737.

Timothy Craven was employed in the Treasury extension as a laborer upon daily wages. He was employed and paid the highest market price then paid by private parties for similar services. Part of the time he worked at $1 75 per day, and part at $2 per day. His petition was filed on the 30th June, 1873.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding, as a matter of law, that the claimant was in the civil service of the United States within the meaning of the joint resolution of 28th February, 1867.

3. In deciding that no position of the claimant's demand was barred by the statute of limitations, and that his demand did not accrue until the expiration of the fiscal year.

The reasons set forth in the cases of Fugitt and Townley, *supra*, are urged in support of the 1st and 2d assignments of error. For the argument on the 3d assignment of error, see the case of Maurice Tucker, No. 745, *post*. Tucker was employed on a monthly salary, while Craven was on daily wages.

---

THE UNITED STATES, *Appellants*, *vs.* JOHN WILD. } No. 738.

John Wild was employed by the authority of the Surgeon General of the Army as a carpenter at the depot for receiving and distributing medical supplies in Washington. He was employed and paid at the same rates then paid by individuals or corporations for like services.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In finding, as a matter of law, that the claimant was in the civil service of the United States within the meaning of the joint resolution of 28th February, 1867.

3. In finding, as a matter of law, that the *Medical*

*Department of the Army* at Washington is a division or bureau of the War Department within the meaning of the joint resolution, and that claimant should recover twenty per cent. upon his compensation.

ARGUMENT.

As to the first and second errors assigned we present the reasons urged in Fugitt's case, *supra*.

As to the third error he is not entitled to the benefits of the resolution, for he was employed in connection with military, not the civil service.

By the 17th section of act of July, 1866, (14 St. L., p. 334,) the Medical Department of the Army is defined. At the head of it is the Surgeon General; its officers are five medical storekeepers. The appropriation for this Department for the fiscal year ending June 30, 1867, is found in the act making appropriations for the support of the army, p. 91, 14 St. L.

The appropriation for the Surgeon General's Office is found among the appropriations for the War Department, p. 199, 14 St L., but this man's duties were with one of the medical storekeepers, and not in the office of the Surgeon General.

---

THE UNITED STATES, *Appellants*, *vs.* JOHN DONNELLY. } No. 739.

John Donnelly was employed as a watchman, laborer, and teamster by the Quartermaster's department at the city of Washington. He was employed and paid at the same rates then paid by individuals or corpora-

tions for like services. His services continued to the 30th June, 1867, and his petition was filed on the 30th June, 1873.

ASSIGNMENT OF ERRORS.

The court erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding, as a matter of law, that claimant was in the civil service of the United States within the meaning of the joint resolution of 28th February, 1867.

3. In deciding that no portion of the claimant's demand was barred by the statute of limitations, and that his demand did not accrue until the expiration of the fiscal year.

ARGUMENT.

As to the first and second errors assigned, we present the reasons urged in Fugitt's case, No. 733, and in Wood's case, No. 736.

As to the the third error, see the case of Maurice Tucker, *post*, No. 745.

---

THE UNITED STATES, *Appellants*,
*vs.*
O. H. O. HOFFMAN. } No. 740.

O. H. O. Hoffman was employed by one of the quartermasters on duty in the department at Washington, at the same rates then paid by individuals or corporations for similar services. He was employed by the day as sexton at the Arlington cemetery in Virginia, and there rendered his services.

ASSIGNMENT OF ERRORS.

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding, as a matter of law, that claimant was within the meaning of the joint resolution employed at Washington by the Quartermaster's department, and that he should recover twenty per cent. upon his compensation.

ARGUMENT.

The principles contended for in the cases of Fugitt and Wood are applicable to this case.

As to this claimant the resolution reads as follows: "That there shall be allowed and paid * * * to the following-described persons now employed in the civil service of the United States at Washington, as follows: * * * and including civil officers and temporary and all other clerks, and employés, male and female in the offices of the * * * quartermaster's * * * an additional compensation of twenty per cent." That he was employed and paid by a quartermaster who had his office in Washington does not constructively fix his employment either in Washington or in the Quartermaster's office, when the actual employment was in another State. If Congress had meant Washington and vicinity they would have so expressed it.

---

THE UNITED STATES, *vs.* PATRICK WELCH. } No. 741.

The facts, errors, and argument in this case are the same as in the case of J. D. Townley, *supra*, No. 734.

THE UNITED STATES, *Appellants*,
*vs.*
JAMES HANNAN. } No. 742.

The appellee was employed as a laborer by the Commissary department at Washington, and was employed and paid at the same rates then paid by individuals or corporations for like services.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In finding, as a matter of law, that the claimant was in the civil service of the United States within the meaning of the joint resolution of 28th July, 1867.

3. In finding, as a matter of law, that the Commissary department at Washington is a division or bureau of the War Department within the meaning of the joint resolution of 28th February, 1867, and that claimant should recover twenty per cent. upon his compensation.

ARGUMENT.

As to the first and second errors, see case of Fugitt.

As to the second and third errors, he is not entitled to the benefits of the resolution, for he was employed in connection with the military, not the civil service. The Subsistence department is not a bureau or division of the War Department, but of the army, as appears from sec. 16 of act of 28th July, 1866, 14 St. L., p. 334. Among its officers as therein prescribed, are eight commissaries of subsistence, with the rank, &c., of major.

By one of these commissaries of subsistence (Major Bell) is the evidence of claimant's service furnished. The appropriation for subsistence is found in the army appropriation bill, page 90, 14 St. L.

The specific enumeration of the offices of the Paymaster General and Commissary General of Prisoners, and the Quartermaster's Bureau, in the resolution, work an exclusion of all other Bureaus of the War Department, even if the Department of Subsistence should be deemed a part of the War Department.

---

THE UNITED STATES, *Appellants*,
*vs.*
THOMAS DORKIN. } No. 743.

Thomas Dorkin was employed as a laborer, upon daily wages, at the Washington arsenal, by Gen. Geo. D. Ramsey. He was employed and paid at the same rates then paid by individuals or corporations for like services.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In finding, as a matter of law, that the claimant was in the civil service of the United States within the meaning of the joint resolution of July 28, 1867.

ARGUMENT.

The principles contended for in the case of Fugitt, as far as they are applicable to this case, are commended to the attention of the court.

By the 9th section of act of February 8, 1865, 3 Stat. at Large, 204, the public armories were placed under the direction of the Ordnance department, and the resolution of February 28, 1867, when it gives the additional compensation to employés in the office of the arsenal, refers to the office of the Ordnance department. Who the employés in the Ordnance office in 1867 were, as recognized by the head of that department, appears from pages 189 and 190 of the official register for that year. These were evidently in receipt of a salary ($720) that had been fixed by law, and these are the men whom the resolution was to benefit. This claimant was upon daily wages, and had no other connection with the Ordnance office than receiving his pay there; neither actively nor constructively was he in the office of the arsenal. The decision in Stone's case, p. 263, 3d Court of Claims Reports, "that one holding a *salaried appointment*, whose name is on the regular pay roll of the Commissioner of Public Buildings, acting daily under his instructions as an employé "in the office" of that functionary, seems to us to afford the true test for distinguishing those "in the office" from those who are outside laborers.

---

THE UNITED STATES, *Appellants*,
*vs.*
JOHN SMTH. } No. 743.

The facts, errors, and argument in this case are the same as in the case of John Donnelly, No. 937.

THE UNITED STATES, *Appellants*,
*vs.*
MAURICE TUCKER.
No. 745.

Maurice Tucker was employed in the Secret Service division of the Treasury Department in the capacity of detective at a monthly salary of one hundred and fifty dollers per month, which was the rate then paid by individuals or corporations for like services. He continued in this service until the 30th of June, 1867, and filed his petition on the 30th of June, 1873.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding, as a matter of law, that the claimant was in the civil service of the United States within the meaning of the joint resolution of 21st February, 1867.

3. In deciding that no portion of the claimant's demand was barred by the statute of limitations, and that his demand did not accrue until the expiration of the fiscal year.

ARGUMENT.

As to first and second error, see case of Fugitt. As to third error: The services of Tucker having been rendered under an agreement for monthly services, he was entitled to that salary at the end of every month, independent of any law of Congress relative to the payment of annual salaries. The statute of limitations would commence to run on the salary for each month six years from the end of that month. That

Congress intended this twenty per cent. to be computed on the instalments of compensation as they fell due is evident from the language of the resolution, "when any of said persons *is* or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services."

The addition, being an incident of the salary, the statute would run against the instalments of twenty per cent. in the same manner as against the instalments of salary. (Angell on Limitations, sec. 110, p. 125.)

Nor would the payment of any part of such salary within six years prevent the statute from running against instalments of additional allowance that were due before that time. Payment of the principal did not take the interest out of the statute in Collyer *vs.* Willock, 4 Bingham, 314.

The doctrine of running accounts does not apply to this case, for there were no mutual dealings and no reciprocal demands. (See Smith's Leading Cases, vol. 1, part II, pp. 878, 879, 880, 881; marginal pp. 719, 720, and cases there cited.)

---

THE UNITED STATES, *Appellants*,
*vs.*
GEO. A. BELL. } 746.

Geo. A. Bell, was a plate printer in the Bureau of Engraving and Printing, in the Treasury Department. He was paid the market price for his work, the price being neither a salary nor a per diem compensation, but a fixed rate for the work done. In the performance

of his duties he employed and paid an assistant, but the pay of the assistant was received directly by her from the disbursing officers of the Treasury and was deducted by them from the amount earned by claimant. The amount paid him after such deduction, was $1,184 30, for twenty per cent. of which the court below entered judgment.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing claimant's petition for want of jurisdiction.

2. In deciding as a matter of law that he was in the civil service of the United States within the meaning of the joint resolution of February 28, 1867, and should recover twenty per cent. upon his compensation.

ARGUMENT.

The facts of the case show that George A. Bell was not in the employ of the Government, receiving pay for his services as such, but was a contractor paid for finished work. That certain precautionary measures required this work to be done in one of the Government buildings, none the less make him a contractor, nor is there any difference between the employment of one or a thousand assistants. One who contracts for the erection of a building for the Government would not have been within the meaning of the joint resolution, so as to demand twenty per cent. on his profits in the contract, after payment of his assistant or assistants. Nor is this claimant in any better position.

G. H. WILLIAMS,
*Attorney General.*
JOHN GOFORTH,
*Assistant Attorney General.*

# Supreme Court of the United States.

THE UNITED STATES

*vs.*

| | |
|---|---|
| Thomas Fugitt | No. 733. |
| J. D. Townley | 734. |
| John Cullen | 735. |
| Chas. Wood | 736. |
| Timothy Craven | 737. |

## BRIEF FOR THE APPELLEES.

J. Daniels, *Attorney for Appellees.*

Judd & Detweiler, Printers.

# Supreme Court of the United States.

THE UNITED STATES

*vs.*

| | |
|---|---|
| THOMAS FUGITT | No. 733. |
| J. D. TOWNLEY | 734. |
| JOHN CULLEN | 735. |
| CHAS. WOOD | 736. |
| TIMOTHY CRAVEN | 737. |

## BRIEF FOR THE APPELLEES.

THE UNITED STATES *vs.* THOMAS FUGITT, No. 733.

The claimant, on the 18th day of January, 1869, filed his petition in the court of claims, in which he alleges that he was in the employ of the Government of the United States from the 1st day of July, 1866, to the 30th day of June, 1867. That he was so employed by the Navy Department, at the navy-yard in the city of Washington, in the Bureau of Yards and Docks, at the agreed price of three dollars and twenty-five cents per day, as a machinist. That during the fiscal year above named he worked two hundred and forty-seven days, making the sum of eight hundred and two dollars and seventy-five cents, ($802.75,) and claims judgment for the sum of one hundred and sixty dollars and fifty-five cents, ($160.55,) under the joint resolution of Congress, approved February 28, 1867, which is in the following words, viz:

"That there shall be allowed and paid out of any money in the Treasury, not otherwise appropriated, to the following described persons, now employed in the civil service of the United States, at Washington, as follows: To civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and employees, male and female, in the Executive Mansion, and in any of the following-named Departments, or any bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General's, Agricultural, and including civil officers, and temporary and all other clerks and employees, male and female, in the office of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermaster's, Capitol and Treasury extensions, City Post Office, and Commissioner of Public Buildings; to the photographer of the Treasury Department, to the superintendent of meters, and to lamplighters under the Commissioner of Public Buildings—an additional compensation of twenty per centum on their respective salaries, as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year from and after the 30th day of June, 1866; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said Departments or offices within said year.

"*Provided*, That the above-named additional compensation to the employees of the Patent Office shall be paid out of the funds of said office.

"*Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

Upon proof of the facts stated in the petition, judgment was rendered in favor of claimant, and the Government appeal to this Court.

To entitle the claimant to recover under the resolution, we claim that it is necessary to establish the following facts, and none other:

First. That he was employed in the Navy Yard, in the city of Washington, (the Navy Yard being expressly stated in the resolution,) or in some bureau or division of the Navy Department, during the fiscal year, (or some part of it,) commencing July 1st, 1866, and ending June 30th, 1867.

Second. That he was employed on the 28th day of February, 1867, and that the gross compensation paid him for such service during that period did not exceed the sum of three thousand five hundred dollars. (See the terms of the resolution quoted above.)

It will be seen, by reference to the facts as found by the Court, that they fully met the above requirements.

The court below say in their findings, in substance: That the claimant was employed in the Navy Yard, in the city of Washington, during the period above named, at the price of $3.25 per day; that the gross compensation paid him during the year was $802.75; that he was employed on the 28th day of February, 1867; and further that he was employed in the Bureau of Yards and Docks, that being one of the eight bureaus into which the Navy Department is subdivided.

Upon the finding of facts, it is difficult to see what objection can be made to the judgment rendered in this case, and yet the court below say in effect that they think the judgment erroneous; but, as they are not free from doubt, and as the claimants do not have the right of appeal, they give him a *pro forma* judgment, that their decision may be reviewed by this Court.

It is not difficult to discover the ground of objection in the mind of his honor, Judge Nott, in delivering the opinion of the court below, for he refers to the Baker case, see Court of Claims Reports, in which the court *held*, "that it was necessary to the right of recovery that the claimant should be in the civil service, and that none were in the civil service except those whose salaries were fixed by law;" and his honor, Judge Nott, goes on to say, "that they do not consider that that decision has ever been overruled." Now,

with due respect to the opinion of his honor, Judge Nott, I respectfully submit that the decision in the Baker case was clearly and *emphatically* overruled by the opinion of this Court in the twenty per cent. cases reported in the 13th Wallace, Supreme Court Reports, page 565 to 580 inclusive, for while there was no case before this Court at that time where the claimant was employed by the day, and where the salary was not fixed by law, yet the Court clearly say in those cases, "that it is not necessary that their salary should be fixed by law, and that neither a commission or warrant of appointment is necessary to entitle an employee to the benefit of this resolution under consideration, provided he was actually and properly employed in the Executive Mansion, or in any of the departments or any bureau or division thereof, or in the office of the Capitol or Treasury extensions, Commissioner of Public Buildings, or in any other of the offices therein mentioned, if it appears that he is one of the persons or class of persons described in the joint resolution." More emphatic language, it seems to me, cannot be used.

THE UNITED STATES *vs.* CHARLES F. WOOD, No. 736.

Wood was employed in the Quartermaster's Department as a laborer, at monthly wages, during the year above-named, and the gross compensation paid him during the year was $338.38, twenty per cent. of which is $67.68, for which sum judgment was rendered. The Quartermaster's Department, beside being specifically named in the joint resolution, is a bureau of the War Department, so that this claimant, like the preceding one, is brought directly within the provision of the resolution in a two-fold sense. First, by being employed in a bureau of one of the Departments named; and secondly, by being employed in the Quartermaster's Department, which is specifically named in the resolution.

THE UNITED STATES *vs.* TIMOTHY CRAVEN, No. 737.

This claimant was employed on the Treasury extension

during the fiscal year named in the resolution as a laborer for daily wages, at from $1.75 per day to $2 per day, and the gross compensation paid him during the year was $347.06.

This case is not unlike Miller's case, reported on page 576, 13 Wallace, Sup. Ct. Rep., and under the ruling in that, as well as the other cases named, we cannot see why this claimant should not recover.

THE UNITED STATES *vs.* J. D. TOWNLEY, No. 734.

This man was also employed on the Treasury extension as a coppersmith, for daily wages, at $3.50 per day; gross compensation paid him during the year was $628.25; twenty per cent. upon that sum is $125.65, and for which amount he obtained judgment. This is like the last preceding one, and of course will come within the same ruling.

THE UNITED STATES *vs.* JOHN CULLEN, No. 735.

Cullen was employed as a watchman upon the Capitol extension, at daily wages. He was paid $2.50 per day, and during the year the gross compensation paid him was $1,034.80, making the judgment in his case, $206.96.

This case is like the cases of Holbrook, Richards, and Miller, referred to on page 568, 13 Wallace Rep., with the exception that this man Cullen was paid by the day and the others by the month. But in the light of the decision of this Court, above referred to, this certainly can make no difference.

There are two objections made by the attorney for the Government in the court below which I will notice. First. It was stipulated by the attorney for the claimants in all these foregoing cases that these claimants were paid the highest market price then paid by private parties for similar services, and so the Court find in most of the cases, and this fact alone, say the attorneys for the Government, should

defeat a recovery. In reply to this objection, we say that Congress was aware of this fact when this resolution was passed, and instead of excluding these parties from the benefits of the resolution on such grounds, they fixed the limit to "three thousand five hundred dollars per annum," and expressly provided that when their salaries were not fixed by law, the amount should be computed upon their pay, respectively, for the year; provided that no person should be entitled to the benefits of the resolution whose salary or pay exceeded three thousand five hundred dollars for the year. See the terms of the resolution, quoted above.

It was further objected by the attorney for the Government in the court below that so many of these cases as were filed subsequent to the 28th day of February, 1873, were barred by the statute of limitations. In answer to this proposition, we say this: An appropriation was made for the whole year, commencing on the 1st day of July, 1866, and ending on the 30th day of June, 1867, and therefore the Government were under no obligation to pay until the end of the fiscal year, which was June 30, 1867, and that the statute would not bar them under six years from that time, which would be June 30, 1873, since which time no petitions were filed, and while the Government might have paid these employees so much of this compensation as had accrued at any time after the 28th of February, 1867, (at which time the law was approved,) yet it was not due until the end of the year, for not until that time could the gross compensation paid them for the year be determined or ascertained, and therefore the right of action did not accrue until that time.

Not having the points now made by the Attorney General, I, of course, can only anticipate them by the objections raised in the court below, but I feel certain that, applying to this resolution the ordinary rules of construing *remedial* law, and especially in the light of the authority above referred to, these claimants should all recover.

It will be seen by reference to the record, that his Honor "Chief Justice Drake, says, that, in his opinion, 'the re- "peal of the joint resolution of February 28, 1867, left this "court without jurisdiction of any action for the recovery of "anything thereunder.'"

This point is not made by the Government, and I am not aware of any repealing act which could affect the rights of the parties under this resolution. I know of no act to which the Honorable Chief Justice could refer, save the act of July 12, 1870. Section 4 of that act reads as follows: "that all acts and joint resolutions, or parts thereof, and all resolutions of either House of Congress granting extra compensation or pay, be, and the same are hereby repealed, to take effect on the first day of July, 1870." The joint resolution under consideration added one-fifth to the pay of certain employees of the Government for one fiscal year only, and expired by its own limitation on the 30th day of June, 1867. The period of its existence was fixed at its creation. The rights of the beneficiaries had become vested, and it is difficult to see how they could be affected by the act above referred to passed three years afterwards. There was, however, acts and resolutions then in existence giving additional compensation, and not limited to any definite time, under which certain employees of the Government were receiving pay, and it was those acts and resolutions that the act of 1870 was intended to repeal.

J. DANIELS,
*Attorney for Appellees.*